

Regular Session, 2010

HOUSE BILL NO. 702

BY REPRESENTATIVE LEGER

(On Recommendation of the Louisiana State Law Institute)

AN ACT

To amend and reenact Children's Code Articles 305(A)(1)(b) and (B)(1)(b), 804(3), 841(A) and (C), 855(B)(7), 858(B), 860(A) and (B), and 867(A) and (C) and to enact Children's Code Articles 841(D) and 884.1, relative to the continuous revision of the Children's Code; to provide for divestiture of juvenile court jurisdiction; to provide for criminal court jurisdiction; to provide for definitions; to provide for advice of rights; to provide for notice of a motion to transfer; to provide for sex offender registration and notification requirements; to provide for informal adjustment agreements; to provide for certain types of medical examinations in motions to transfer and in adjudication hearings; to provide for the report of the sanity commission; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Children's Code Articles 305(A)(1)(b) and (B)(1)(b), 804(3), 841(A) and (C), 855(B)(7), 858(B), 860(A) and (B), and 867(A) and (C) are hereby amended and reenacted and Children's Code Articles 841(D) and 884.1 are hereby enacted to read as follows:

Art. 305. Divestiture of juvenile court jurisdiction; original criminal court jurisdiction over children; when acquired

A.(1) When a child is fifteen years of age or older at the time of the commission of first degree murder, second degree murder, aggravated rape, or aggravated kidnapping, he is subject to the exclusive jurisdiction of the juvenile court until either:

\* \* \*

1 (b) The juvenile court holds a continued custody hearing pursuant to Articles  
 2 819 and 820 and finds probable cause that he committed one of these offenses,  
 3 whichever occurs first. During this hearing, when the child is charged with  
 4 aggravated rape, the court shall inform him that if convicted he shall register as a sex  
 5 offender for life, pursuant to Chapter 3-B of Title 15 of the Louisiana Revised  
 6 Statutes of 1950.

7 \* \* \*

8 B.(1) When a child is fifteen years of age or older at the time of the  
 9 commission of any of the offenses listed in Subparagraph (2) of this Paragraph, he  
 10 is subject to the exclusive jurisdiction of the juvenile court until whichever of the  
 11 following occurs first:

12 \* \* \*

13 (b) The juvenile court holds a continued custody hearing and finds probable  
 14 cause that the child has committed any of the offenses listed in Subparagraph (2) of  
 15 this Paragraph and a bill of information charging any of the offenses listed in  
 16 Subparagraph (2) of this Paragraph is filed. During this hearing, when the child is  
 17 charged with forcible rape or second degree kidnapping, the court shall inform him  
 18 that if convicted he shall register as a sex offender for life, pursuant to Chapter 3-B  
 19 of Title 15 of the Louisiana Revised Statutes of 1950.

20 \* \* \*

21 Comment - 2010

22 Chapter 3-B of Title 15 requires registration as a sex offender for any  
 23 juvenile who was transferred to adult court and has pled guilty or has been convicted  
 24 after trial of second degree kidnapping, aggravated rape, or forcible rape.

25 \* \* \*

26 Art. 804. Definitions

27 As used in this Title:

28 \* \* \*

29 (3) "Delinquent act" means an act committed by a child of ten years of age  
 30 or older which if committed by an adult is designated an offense under the statutes  
 31 or ordinances of this state, or of another state if the ~~act~~ offense occurred ~~in another~~

1       ~~state there~~, or under federal law, except traffic violations. It includes an act  
2       constituting an offense under R.S. 14:95.8 and a direct contempt of court committed  
3       by a child.

4                               \*       \*       \*

5                               Comment - 2010

6               This revision shifts the illegal possession of a firearm offense from the  
7       category of FINS cases to delinquency cases. This revision corrects a long standing  
8       anomaly and follows the recent ruling in State ex rel. D.J., 5 So.3d 923 (La.Ct.App.  
9       4th Cir. 2009).

10                              \*       \*       \*

11       Art. 841. Effect of agreement

12               A. An informal adjustment agreement shall not be considered an  
13       adjudication. Evidence of the existence of ~~such~~ an agreement shall not be used  
14       against the child over objection in any adjudication hearing or criminal trial. ~~Such~~  
15       That evidence may be used in a disposition hearing in the juvenile court or for the  
16       purpose of a presentence investigation after a criminal conviction.

17                              \*       \*       \*

18               C. Any incriminating statement made by the child to the person giving  
19       counsel or advice and in the discussions or conferences incident to the informal  
20       adjustment agreement shall not be used against the ~~declarant child~~, over objection,  
21       in an adjudication hearing or criminal trial. ~~Any such~~ The incriminating statement  
22       may be used in a disposition hearing in the court or for the purpose of a presentence  
23       investigation after a criminal conviction.

24               D. If any medical, mental health, sensory, or special competency evaluation  
25       is performed during the period of an informal adjustment agreement, the report shall  
26       not include any incriminating statement made by the child. The examination shall  
27       not occur until five days after the clerk of court has given notice to all parties of the  
28       examination order. Any incriminating statement made by the child to the evaluator,  
29       which would violate the child's privilege against self-incrimination, shall not be used

1           against him in any future court proceedings, adjudication hearing, or later criminal  
2           trial.

3                                   \*           \*           \*

4           Art. 855. Advice of rights at appearance to answer

5                                   \*           \*           \*

6                       B. If the child is capable, the court shall then advise the child of the  
7           following items in terms understandable to the child:

8                                   \*           \*           \*

9                       (7) The possible consequences of his admission that the allegations are true,  
10           including the maximum and minimal dispositions which the court ~~might~~ may impose  
11           pursuant to Articles 897 through 900. In addition, if the child is fourteen years of  
12           age or older and the petition charges the child with the perpetration, attempted  
13           perpetration, or conspiracy to commit any of the following offenses, the court shall  
14           inform the child that, if he admits to allegations of the petition, or the allegations of  
15           the petition are found to be true, he may be required to register as a sex offender  
16           pursuant to Chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950, and  
17           the court shall inform the child regarding applicable required registrations and their  
18           duration:

19                       (a) Aggravated rape as defined in R.S. 14:42.

20                       (b) Forcible rape as defined in R.S. 14:42.1.

21                       (c) Second degree sexual battery as defined in R.S. 14:43.2.

22                       (d) Aggravated kidnapping of a child who has not attained the age of thirteen  
23           years pursuant to R.S. 14:44 or 44.2.

24                       (e) Second degree kidnapping of a child who has not attained the age of  
25           thirteen years as defined in R.S. 14:44.1.

26                       (f) Aggravated incest involving circumstances defined by R.S. 14:78.1 as an  
27           aggravated offense.

28                       (g) Aggravated crime against nature as defined in R.S. 14:89.1.

## Comment - 2010

This is an amplification of the *Boykin* and "Adam Walsh" requirement that an accused be informed by the court of the maximum dispositions that may be imposed should he be convicted. After Louisiana enacted an "Adam Walsh" statute, Chapter 3-B of Title 15, conviction of a juvenile offender for certain sex offenses became a very serious matter with life-altering consequences. Registration is required for juvenile offenders who are transferred to criminal court and found guilty or who pleaded guilty to certain offenses. The revision to Subparagraph (7) lists the age and offense requirements of R.S. 15:542(A)(3). Adjudication for an "aggravated offense", as defined in R.S. 15:541(2) requires lifetime registration and quarterly in-person registration renewals.

\* \* \*

## Art. 858. Motion for transfer; notice

\* \* \*

B. Notice in writing of the time, place, and purpose of the hearing ~~must~~ shall be given to the child and his parents and other custodian, if any, at least ten days before the hearing. In addition, if the petition charges the child with second degree kidnapping, aggravated rape, or forcible rape, the court shall inform the child regarding the applicable registration and duration requirements in Chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950.

## Comment - 2010

R.S. 15:541(2) requires registration for any juvenile who was transferred to criminal court, pursuant to Article 857, and thereafter convicted or pleaded guilty to any of these three offenses.

\* \* \*

## Art. 860. Medical, sensory, psychological, and psychiatric examinations

A. On its own motion or on the motion of the child or district attorney, the court may order any child subject to a motion to transfer to be examined by a physician, optometrist, audiologist, psychologist, or psychiatrist. Unless waived by the child, the examination shall not occur until five days after the clerk of court has notified all parties of the examination order.

B. Any examination shall be made and the findings submitted to the court within three days of the transfer hearing. ~~Such~~ This time period may be extended by the court for good cause.

\* \* \*

1 Art. 867. Medical, sensory, psychological, and psychiatric examinations

2 A. On its own motion or on the motion of the child or district attorney, the  
3 court may order any child ~~concerning whom a petition has been filed~~ to be examined  
4 by a physician, optometrist, or audiologist. Unless waived by the child, the  
5 examination shall not occur until five days after the clerk of court notified all parties  
6 of the examination order.

7 \* \* \*

8 C. Any examination ~~as herein provided~~ shall be made and the findings  
9 submitted to the court within thirty days of the date the order is entered. ~~Such~~ This  
10 time period may be extended by the court for good cause.

11 \* \* \*

12 Art. 884.1. Informing the child of sex offender registration and notification  
13 requirements; form

14 A. When the child has admitted the allegations of the petition or when  
15 adjudicated delinquent for any of the following offenses, the court shall provide him  
16 with written notice of the requirements for registration as a sex offender:

17 (1) Aggravated rape as defined in R.S. 14:42.

18 (2) Forcible rape as defined in R.S. 14:42.1.

19 (3) Second degree sexual battery as defined in R.S. 14:43.2.

20 (4) Aggravated kidnapping of a child who has not attained the age of thirteen  
21 years pursuant to either R.S. 14:44 or 44.2.

22 (5) Second degree kidnapping of a child who has not attained the age of  
23 thirteen years as defined in R.S. 14:44.1.

24 (6) Aggravated incest involving circumstances defined by R.S. 14:78.1 as  
25 an aggravated offense.

26 (7) Aggravated crime against nature as defined in R.S. 14:89.1.

1                    B. The court shall use this form for the notice:

2                    STATE IN THE INTEREST OF \_\_\_\_\_

3                    JUDICIAL DISTRICT COURT

4                    DOCKET # \_\_\_\_\_ PARISH OF \_\_\_\_\_

5                    DIVISION \_\_\_\_\_ STATE OF LOUISIANA

6                    Notification to Sex Offender in accordance with Children's Code Article 884.1, this

7                    Court has the duty to provide \_\_\_\_\_ (name of juvenile) with

8                    the information necessary for awareness of sex offender and child predator

9                    registration requirements. \_\_\_\_\_ (name of juvenile) has

10                  admitted the allegations of the petition or has been adjudicated of a violation of R.S.

11                  \_\_\_\_\_. Based on the provisions of Chapter 3-B of Title 15 of the Louisiana

12                  Revised Statutes of 1950 and the substance of the statute violated, IT IS ORDERED

13                  that \_\_\_\_\_ shall register for the period of \_\_\_\_\_ from the

14                  date of his release from confinement being placed on aftercare, supervised release

15                  or probation, or from the date of his adjudication, if the disposition does not involve

16                  a term of confinement.

17                  (1) You shall initially register with the sheriff and chief of police, if any, of

18                  the parish of the juvenile court in which you were adjudicated. Additionally, you

19                  shall update your registration, in person, every ninety days from the date of initial

20                  registration, with the sheriff and chief of police, if any, of the parish of your

21                  residence and the parish where you attend school or are employed.

22                  Within three business days of establishing residence in Louisiana or if a

23                  current resident, within three business days after adjudication if not immediately

24                  committed to confinement or taken into custody, or within three business days after

25                  release from confinement, you shall obtain and provide all of the following

26                  information to each sheriff or police department (except in Orleans Parish where

27                  registration shall take place with the New Orleans Police Department):

28                    (a) Name and any aliases.

29                    (b) Physical address or addresses of residence.

1           (c) Name and physical address of place of employment. If you do not have  
2           a fixed place of employment, you shall provide information with as much specificity  
3           as possible regarding the places where you work, including but not limited to travel  
4           routes.

5           (d) Name and physical address of the school in which you are a student.

6           (e) Two forms of proof of residence for each residential address provided,  
7           including but not limited to a driver's license, bill for utility service, and bill for  
8           telephone service. If those forms of proof are not available, you may provide an  
9           affidavit of an adult resident living at the same address.

10          (f) The offense for which you were adjudicated and the date and place of the  
11          adjudication, and if known, the court in which the adjudication was obtained, the  
12          docket number of the case, the specific statute violated, and the disposition imposed.  
13          Note that this information is all contained at the beginning of this form.

14          (g) A current photograph, fingerprints, palm prints, and a DNA sample.

15          (h) Your telephone numbers, including fixed location phone, mobile phone  
16          numbers, or telephone number associated with any residence address.

17          (i) A description of every vehicle registered to or operated by you, including  
18          license plate number and a copy of your driver's license or identification card.

19          (j) Your social security number and date of birth.

20          (k) A description of your physical characteristics, including but not limited  
21          to sex, race, hair color, eye color, height, age, weight, scars, tattoos, or other  
22          identifying marks.

23          (l) Every e-mail address, online screen name, or other online identity you use  
24          or have used to communicate on the Internet.

25          (m) Temporary lodging information regarding any place where you plan to  
26          stay for seven or more days and the length of the planned stay.

27          (n) Travel and immigration documents, including but not limited to passports  
28          and documents establishing immigration status.

29          (2) If you are committed to the office of juvenile justice, you shall provide  
30          this information to that office within ten days prior to release from confinement.



1        You shall still appear in person at the sheriff's office within three business days of  
2        release from confinement.

3                (3) During the declaration of an emergency if you enter an emergency  
4        shelter, you shall, within the first twenty-four hours of admittance, notify the  
5        management of the shelter, the chief of police of the municipality, and the sheriff of  
6        the parish in which the shelter is located of your sex offender status.

7                (4) You have a duty to provide notice of change of address or other  
8        registration information to the sheriff of the parish of residence within three business  
9        days. If the new or additional residence is located in a different parish, then you  
10       shall register with the sheriff of the parish in which the new or additional residence  
11       is located. You shall also send written notice within three business days of  
12       re-registering in the new parish to the sheriff of the parish of former registration.

13               (5) If you provide recreational instruction to persons under the age of  
14       seventeen, you shall post a notice in the building or facility where such instruction  
15       is being given.

16               (6) Within ten days prior to release from confinement in a correctional  
17       facility, you shall provide a photograph and other relevant information noted in this  
18       Article to the office of juvenile justice for purposes of the State Sex Offender and  
19       Child Predator Registry.

20               (7) If you change your place of residence or establish a new or additional  
21       residence, you shall appear in person at the office of the sheriff of your parish of  
22       residence where you are currently registered within three business days of the change  
23       to register the new address. If the new address is located in a different parish, then  
24       you shall also appear in person at the office of the sheriff of your new parish of  
25       residence within the same time period. If your parish of residence is in Orleans  
26       Parish, then the registration shall take place at the New Orleans Police Department  
27       and not with the Orleans Parish Sheriff's Office.

28               (8) If you are absent from your current address of registration for more than  
29       thirty consecutive days or an aggregate of thirty days or more in a calendar year, and  
30       are physically present at another address during that same period of time, you shall

1        register the new address in person as one of your addresses of residence. If the new  
2        address is in a parish different from your current address, you shall also register in  
3        person with the sheriff of the new parish within three business days of the tolling of  
4        the time periods listed. This requirement notwithstanding, you shall still notify the  
5        sheriff of one of your parishes of residence in person if you are to take up temporary  
6        lodging for seven or more days. It is only after the thirty-day limit is exceeded that  
7        the new registration shall occur. If your address of residence is in Orleans Parish,  
8        this registration update shall take place at the New Orleans Police Department and  
9        not with the Orleans Parish Sheriff's Office.

10        (9) You shall also appear in person at the office of the sheriff of any of your  
11        parishes of residence when there is a change in your name, place of employment, or  
12        enrollment. This appearance shall occur within three business days of the change.  
13        If your address of residence is in Orleans Parish, this registration update shall take  
14        place at the New Orleans Police Department and not with the Orleans Parish Sheriff's  
15        Office.

16        (10) You shall also timely sign and return the periodic address verification  
17        form sent to you by the Louisiana Bureau of Criminal Identification and Information  
18        according to the instructions on the verification form.

19        (11) You shall update your registration annually on the anniversary of the  
20        initial registration by appearing in person at the office of each law enforcement  
21        agency with which you are required to register and shall pay an annual registration  
22        fee of sixty dollars (\$60.00).

23        (12) Failure to comply with any of these registration and notification  
24        requirements is a felony for which you may be punished by a fine of up to one  
25        thousand dollars (\$1,000.00) and imprisonment at hard labor for not less than two  
26        years nor more than ten years without benefit of parole, probation, or suspension of  
27        sentence. Upon a second or subsequent conviction, you may be punished by a fine  
28        of up to three thousand dollars (\$3,000.00) and imprisonment at hard labor for not  
29        less than five years, nor more than twenty years without benefit of parole, probation,  
30        or suspension of sentence.

(13) If you have been adjudicated of a sex offense as defined in R.S. 15:541 involving a victim who was under the age of thirteen at the time of the offense, you are prohibited from residing or being present in certain locations. A copy of this statute is provided to you with this notification, if applicable.

THUS DONE AND SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ in  
open court, in \_\_\_\_\_, Louisiana.

Judge, \_\_\_\_\_ Juvenile Court

I hereby certify that the above requirements have been explained to me, that

I have received a copy of the above notice of sex offender registration and

notification requirements, and a copy of the statutes providing for such requirements.

I also understand that I will be subject to any changes made by the legislature to the

registration laws from this day forward.

Signature of Juvenile

Defense Counsel Signature

Comment - 2010

The notification form is based on the form provided in R.S. 15:543.1.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_